ST 98-18
Tax Type: SALES TAX
Issue: Audit Methodologies and/or Other Computational Issues

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS v. **ABC CORPORATION,** Taxpayer	No. IBT: NTL: Christine O'Donoghue Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Howard Turner, for ABC CORPORATION; Mr. Mark Dyckman, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

This matter comes on pursuant to ABC CORPORATION's (hereinafter "taxpayer") timely protest of two Notices of Tax Liability issued for the period of January 1, 1991 through December 31, 1994. The issues to be resolved in this matter are: 1) whether the items assessed are exempt under 35 **ILCS** 120/2-5 (18) as either exempt medallions or exempt bullion; 2) whether there is reasonable cause for the abatement of penalties; and 3) whether the audit methodology was correct. Upon review of the transcript and all evidence admitted, I find in favor of the Department on all issues and, therefore, recommend that the Notices of Tax Liability be finalized as revised by the re-audit calculations admitted into evidence as Department Ex. No. 6.

Findings of Fact:

1. The Department established its *prima facie* case, inclusive of all jurisdictional elements by the introduction of two correction of returns, the first issued on August 7, 1995 which reflects tax due of $78,430.00 and $7,843 in penalties for the period of January 1, 1991 through November 30, 1993. The second correction of return, also issued on August 7, 1995 shows $48,992 in tax due and $2,450 in penalties for the period of December 1, 1993 through December 31, 1994. Department Grp. Ex. Nos. 1 & 2; Tr. pp. 17, 18.
2. ABC CORPORATION issues, sells and distributes sports commemorative medallions. These commemorative medallions are composed of approximately one-ounce of pure silver. It has sold these medallions since 1984. 7/18/97 Tr. pp. 5, 6. There is no evidence that taxpayer is a governmental entity. 7/18/97 Tr. pp. 5,6.
3. Taxpayer also sells silver trading cards. Tr. p. 6. Taxpayer began selling the silver trading cards in the summer of 1992. Tr. p. 17.
4. JOHN DOE is the president and principal shareholder of ABC CORPORATION He has been the president since 1975. Tr. pp. 4, 5.
5. JIM DOE is the comptroller of ABC. Tr. p. 70. His duties include overseeing the day to day financial considerations of the company. Tr. p. 70. JIM DOE is responsible for the business and financial records of the taxpayer. Tr. p. 71.
6. At the beginning of the original audit, the taxpayer's CPA, RON DOE, signed a one-page document titled, "Agreement Authorizing Test Check/ Statistical Sampling Audit." This agreement indicated that the sample for consumable supplies would consist of purchase

invoices for the period of March, 1992 through February, 1993. Dept. Ex. No. 2; Tr. pp. 18, 19.

7. RON DOE also signed a one-page document entitled, "Agreement Authorizing Test Check/ Statistical Sampling Audit," indicating that the auditor would block sample a two-month period of sales invoices. The auditor sampled the months of January, 1992 and July, 1993. Dept. Ex. No. 3; Tr. p. 19.

8. During the original audit, the auditor requested the sales journals, general ledger, disbursement journals, sales invoices, purchase invoices, federal tax returns and the compilation reports from the accountant for the entire audit period. Tr. p. 29.

9. The auditor issued a 60-day demand letter for the taxpayer's resale certificates. Dept. Ex. No. 4. The taxpayer could not produce all of the necessary resale certificates. Tr. p. 30.

10. While this matter was in administrative hearings, the parties agreed to conduct a re-audit of the taxpayer's books and records. During this re-audit, the taxpayer produced royalty reports, which are essentially sales journals, for 1992, 1993, and 1994. Royalty reports for 1991 were not provided during the audit or during the re-audit. Tr. pp. 32, 33, 47, 48; Taxpayer Ex. No. 4. RON DOE also prepared a spreadsheet summarizing the results of the audit findings for the period of January 1, 1992 through December 31, 1994. The 1991 audit year was omitted from RON DOE's spreadsheet. Tr. pp. 30, 32. The auditor used the royalty report summaries provided by the taxpayer to develop the total sales figures for the re-audit. Tr. p. 63.

11. Since the taxpayer was unable to provide documentation for 1991, the parties agreed that the 1991 sales figures would be determined by projections based upon the revised audit results for the calendar years 1992 and 1993. Stip. ¶ 1. During the re-audit, the auditor

averaged the sales figures from 1992 and 1993 and used this figure to determine the sales for 1991. Tr. pp. 39, 48, 49. Sales for 1994 were not used to project the 1991 sales because the 1994 sales figures were not reflective of the whole audit period, since the Bulls did not win a championship in 1994. Tr. p. 64.

12. During the re-audit, the auditor sampled a six-month period of the taxpayer's summary reports. He did not examine the royalty reports for the entire 36 month period. Tr. pp. 33, 34, 45. The auditor checked the following months for errors: 1/93, 3/93, 5/93, 1/94, 3/94, and 4/94. Tr. p. 46.

13. During the review, the auditor found several errors in the sample months. The auditor tested two months to determine if all of the Illinois sales were captured. Tr. pp. 34-36, 46; Taxpayer Ex. No. 3B. During that two-month period, the auditor found errors of $404.80, which projected out to approximately $1500.00 in tax for the entire 48 month audit period. Tr. p. 47; Taxpayer Ex. No. 3E. The auditor also found one math error for approximately $525.00 and found a credit on one tape for which RON DOE could not produce the offsetting sale. Tr. p. 34. The auditor projected all of the errors found to the remaining months of the audit period. The resulting tax liability was approximately $7,000.00. Tr. p. 34.

14. The auditor projected the errors by dividing the error amount by the total sample sales figure and multiplying this result by the total amount of taxable sales for the entire audit period. Tr. p. 64.

15. The auditor did not examine all of the months in detail due to the condition of the records. The records for the 36 months were torn, crinkled, and had missing pages,

similar to the ones submitted into evidence. It would have taken an inordinate amount of time to go through all of the records. Tr. pp. 35, 36.

16. In developing the total sales figures for the re-audit, the auditor used the numbers that the taxpayer provided on its royalty reports. Tr. p. 63.

17. The auditor examined the general ledger for the entire audit period. Tr. p. 54.

18. The auditor based the use tax projection figures on the original audit. The use tax amount totaled $10,346.00. Tr. p. 53. This figure was based upon a total disbursement figure of $7,228,844.00 for the 1993 fiscal year. Tr. p. 53.

19. Disbursement journals and purchase invoices were made available to the auditor for the entire four-year audit period. Tr. p. 54.

20. During the course of the second audit, the taxpayer did not provide the auditor with any resale certificates. Tr. p. 66; Taxpayer Ex. No. 3A.

21. No new information was provided for the consumable supply purchases during the re-audit. Tr. p. 66. The taxpayer did not request that the auditor review the consumable supply purchases during the course of the re-audit. Tr. p. 66.

22. DON DOE is the president of various companies in Springfield, Illinois. Tr. p. 108. These businesses sell, store, and move precious metals. Tr. p. 108. He has been involved in this line of business since 1975. Tr. p. 108.

23. DON DOE is also the president and chairman of the XYZ Association. Tr. p. 108. He has held that position since 1981. Tr. p. 109.

Conclusions of Law:

The taxpayer contends that the sales of its' medallions are exempt under 35 **ILCS** 120/2-5(18), which reads in pertinent part:

> Gross receipts from proceeds from the sale of the following tangible personal property are exempt from the tax imposed by this Act. …
>
> (18) legal tender, currency, medallions, or gold or silver coinage issued by the State of Illinois, the Government of the United States of America, or the government of any foreign country, and bullion.

35 **ILCS** 105/3-25 reads:

> Bullion. For purposes of the exemption pertaining to bullion, "bullion" means gold, silver, or platinum in a bulk state with a purity of not less than 980 parts per 1,000.

The Department maintains that in order for the medallions to qualify under this exemption, it must be either issued by the State of Illinois, the Government of the United States of America or a foreign government. Taxpayer's medallions, obviously, are not issued by any of these government bodies, therefore, the Department contends that the medallions are taxable under a proper reading of the statute.

The taxpayer, on the other hand, contends that based upon the plain language of the statute, only gold or silver coinage are required to be issued by the enumerated government bodies, consequently, the gross receipts from the sale of its medallions are not subject to the Retailers' Occupation Tax Act. It argues that each of the four categories; 1) legal tender, 2) currency, 3) medallions, and 4) gold or silver coinage are separate and alternative members of the statutory sentence and that the government modifier can only apply to words in the statutory alternative of which it is a part. Accordingly, it can only apply to the words "gold or silver coinage." Taxpayer Brief p. 13.

Initially, the taxpayer contended that its' sales constituted exempt sales of bullion and included this issue in the pre-hearing order, however, this argument was not addressed by the taxpayer at hearing, nor did it choose to discuss this issue in its post-hearing brief. As a result, this recommendation will not address this argument in detail, except to note that the medallions at issue could not constitute bullion, which by definition, must be in a bulk state. *See*, PLR 89-0389.

In interpreting a statutory provision, one must first look to the plain language of the statute to determine the legislative intent. Branson v. Dept. of Revenue, 168 Ill. 2d 247 (1995). Based upon the language of this section, the sales of the taxpayer's medallions are clearly taxable. The word "medallions" is listed along with two other items, "legal tender" and "currency," which by definition are items issued by a government entity. Interestingly, the word bullion, instead of being included in the aforementioned list was added after the government modifier, seemingly indicating that the government modifier is inapplicable to the word "bullion" alone. In fact, this reasonable understanding of the statute has been the long standing interpretation of the Department. The taxpayer places great emphasis on the fact that the items are connected by the word, "or" a disjunctive, rather than the word, "and," a conjunctive. It maintains that the legislators' choice of the word "or" indicates that the government modifier only applies to the words "gold or silver coinage;" however, reliance on this fact alone, without a proper reading of the entire section as a whole is improper. A consideration of the legislature's placement of the government modifier should also be made, since case law indicates that the courts, in fact, will change "or" to "and" and vice versa, whenever the context requires it. *See*, Goldblatt v. City of Chicago, 30 Ill. App. 2d 211 (1st Dist. 1961); John P. Moriarity Inc. v. Murphy, 387 Ill. 119 (1944).

Furthermore, the Illinois Supreme Court has already examined the language of the statute in Springfield Rare Coin Galleries v. Johnson, 115 Ill. 2d 221 (1986), a case which challenged the constitutionality of the original exemption language which included: "except the Republic of South Africa" at the end of the government modifier. Although the issue solely involved the constitutionality of the South African exception, the court made several observations which are instructive on the issue in the present case. The court stated: "On June 22, the House adopted amendment number one to the bill, which excluded gold coins or any of the other enumerated items issued by the Republic of South Africa from the exemption." Springfield Rare Coins, at 226.

Later, the court states "The Presidential ban, however, does not effect Krugerrands already in this country and does not apply to other items named in the Illinois exemption exclusion, that is "legal tender, currency, medallions, gold or silver coinage of the Republic of South Africa, except Krugerrands." Springfield Rare Coins, at 227.

In the first quotation, the court references coins and the other enumerated items issued by the Republic of South Africa. These other enumerated items are, of course, legal tender, currency and medallions. In the second passage, the court indicates that it felt that "except for the Republic of South Africa" modified all of the enumerated items. These statements indicate that the court interpreted the language similarly to the Department's long-standing interpretation.

As an aid in statutory construction, courts will give deference to an administrative agency's interpretation of the statute. Abrahamson v. Ill. Dept. of Prof. Reg., 153 Ill. 2d 76 (1992); Dover Corp. v. Dept of Revenue, 271 Ill. App. 3d 700 (1st District 1995); Illinois Consolidated Telephone Co. v. Illinois Commerce Commission, 95 Ill. 2d 142 (1983). Taxpayer correctly maintains that the Department's interpretation of a statute may not expand the scope of a statute, however, in the case at hand, the Department has neither expanded the scope nor interpreted the provision contrary to legislative intent. The court in United Airlines v. Mahin, 49

Ill. 2d 45 (1971) stated that a court will usually adopt an agency's "contemporaneous construction where it is a reasonably permissible construction, has the implied assent of the legislature, and has been consistent, uniform and long continued." The Department's interpretation in the present case has both the implied assent of the legislature and its' interpretation has been consistently applied for years. The Department's Information Bulletin FY 85-33 (Dept. Ex. No. 7) clearly states that "To qualify for the exemption the legal tender or medallions must have been issued by the State of Illinois, the United States, or the government of any foreign country except the Republic of South Africa. [1] This FYI Bulletin was issued in April of 1985 and still is in effect today. Private Letter Ruling ("PLR") 87-0144 states that, aside from the Republic of South Africa exception, FY 85-33 is otherwise accurate and PLRs 87-0805 and 91-0441 affirm the taxability of medallions that are not issued by a government.

To support its' contention that the Department's interpretation violates the legislative intent, the taxpayer quotes an excerpt from a state representative's speech on the floor of the General Assembly. During this speech, Representative Pierce states that:

> The bill will provide employment and jobs in Illinois, and therefore, revenue to Illinois. It will make uniform the unfair enforcement of our existing vague sales tax laws on sales of gold and silver and coinage, and it does what other states have done in recent years. Ten or fifteen of our sister states, including California and Florida have exempted these types of coins and gold and silver bullion from their sales tax.

83rd General Assembly House of Representatives, June 25, 1984, pages 123 to 124.

The taxpayer then argues that since Rep. Pierce refers to California in his speech, it would be instructive to look at the California statute for guidance in construing the meaning of the Illinois' exemption. Taxpayer maintains that the California statute exempts numismatic

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[1] The South Africa exception was declared unconstitutional in Springfield Rare Coins v. Johnson, 115 Ill. 2d 221 (1986). This ruling had no effect on the rest of the statute.

coins from sales tax and does not restrict the exemption to products issued by governments, therefore, it was the intent of our legislature to do the same. Taxpayer Brief, Appendix A.

Actually, Sec. 6355 of the California statute reads in pertinent part:

> (a) There are exempted from the taxes imposed by this part the gross receipts from the sale in bulk of monetized bullion, nonmonetized gold or silver bullion, and numismatic coins that are substantially equivalent to transactions in securities or commodities through a national securities or commodities exchange and the storage, use, or other consumption in this state of monetized bullion, nonmonetized gold or silver bullion, and numismatic coins so sold.

Section (c) further states that:

> monetized bullion, for purposes of this section, means coins or other forms of money manufactured of gold, silver, or other metal and heretofore, now, or hereafter used as a medium of exchange under the laws of this state, the United States, or any foreign nation. Monetized bullion, for purposes of this section, also means gold medallions struck under authority of the American Arts Gold Medallion Act (Title IV of Public Law 95-630).

The taxpayer contends that the California statute does not limit the exemption to only government issued items, however, the taxpayer's interpretation of this California statute is incorrect. The statute limits the exemption to transactions that are substantially equivalent to transactions in commodities and section (c) specifically states that gold medallions struck under authority of the American Arts Gold Medallion Act are to be considered "Monetized bullion" and are, therefore, exempt from tax. The exemption apparently does not apply to *any* medallion, only to the American Arts Gold Medallions specified. A Chicago Bulls medallion would not qualify as "nonmonetized bullion" which the California regulations define as gold or silver which has a value dependent primarily upon its gold or silver content and not upon its form (*See*, 18 CCR 1599(3)), since the record indicates that the taxpayer's medallions sell for much more than the market value of pure silver sold as bullion. Nor would a Chicago Bulls medallion qualify under the generic term "numismatic coin," because California regulation Section 1599 (a)(1) specifically states that "tax does apply to sales of coins as collector's items or as an investment, except as otherwise specified in this regulation." A review of the regulation does not yield any section which would exempt the medallions at issue in the case at hand. Taxpayer's analysis of the California statute is incorrect and, therefore, its' argument that our legislature meant to exempt any medallion sold, similar to the California statute, is without merit.

Taxpayer further contends that the statute's purpose was to enable Illinois' businesses to compete on an equal basis with businesses in other states. *See*, Springfield Rare Coin, *supra*. The legislators' actual intent, however, was to allow Illinois' coin dealers to be competitive against out of state coin dealers (*See*, 83rd General Assembly Senate, June 28, 1984, page 64), whereas the record reflects that the taxpayer is a manufacturer of medallions and trading cards and a direct marketer of sports commemorative items. Tr. pp. 5, 6. Essentially, the Department's interpretation of the statute does further the purpose of the statute by allowing an Illinois' coin dealer to compete on an equal basis when selling any of the enumerated items which are issued by a government entity.

Lastly, the taxpayer takes issue with the audit methodology. While this matter was in administrative hearings, the parties agreed to conduct a re-audit. The basis of this re-audit was the taxpayer's preparation of royalty reports and summary reports for its sales for the period of 1992 through 1994. Taxpayer's books and records for 1991 were incomplete, and in fact, royalty reports were never produced for 1991 sales, therefore, the taxpayer and the Department agreed to project the sales from 1992 and 1993 to calculate the 1991 taxable sales. During the course of the hearing, the Department offered these revised audit figures into evidence and indicated that it did not dispute the accuracy of the re-audit figures as contained in the revisions in Taxpayer's Exhibit No. 3 and Department Exhibit No. 6. Dept. Brief p. 25.

The taxpayer disputes both the method of calculating the 1991 sales and the error projections on the "self-audit" results. Taxpayer maintains that the auditor should have examined all thirty-six months of its' royalty reports in detail and looks to Goldfarb v. Department of Revenue, 411 Ill. 573 (1952) to support its contention that the Department must examine the royalty reports from the years of 1992 through 1994 in detail and may not use any error projection method. In addition, the taxpayer contends that the Department's method of averaging the 1992 and 1993 sales and then projecting it to 1991 resulted in an incorrect amount of tax. It believes the auditor should have developed a percentage of retail sales based upon the years 1992 through 1993 and applied this percentage to the total 1991 sales figures provided. The difference between the Department's revised audit figures and the taxpayer's proposed revisions amounts to $10,185.00. This $10,185.00 is comprised of $3,509.00 from the 1991 projection amount and the error projections amount to $6,676.94. Taxpayer Brief p. 41.

Taxpayer's reliance on Goldfarb, *supra*, however, is misplaced because the facts are easily distinguishable from the case at hand. The court in Goldfarb did not allow the Department to ignore the taxpayer's books and records when testimony was presented as to the accuracy of these records and the Department was not able to produce evidence which called the records' reliability into question. The Department had not examined the taxpayer's books and records at all, it merely used independent data to determine a mark-up and calculate the tax due. Taxpayer's books and records proved that this mark-up and, thus, the calculated tax was incorrect.

Contrary to the facts in Goldfarb, the Department has not ignored the taxpayer's books and records in determining the additional tax due. The Department, in fact, used the figures from the royalty reports in developing the total sales figures. Six months of royalty reports were examined and the Department found errors that the taxpayer does not even dispute. Tr. pp. 52, 53. The auditor used standard, reliable projection methods to project the errors and the taxpayer has not produced any credible evidence which shows that the auditor's projections were unfair or unreasonable. With regards to the 1991 sales, it is important to note that the taxpayer failed to produce reliable records for that year, thus forcing the Department to average the sales from 1992 and 1993 to determine the 1991 sales. Now, at hearing, the taxpayer proposes an alternative method of calculating its 1991 taxable sales, a method it admits that it did not discuss with the auditor during the course of the re-audit. Tr. p. 99.

Pursuant to Illinois statute and case law, the correction of returns is *prima facie* correct and constitutes *prima facie* evidence of the correctness of the tax due. Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968). The Department's determinations are rebutted only after a taxpayer introduces documentary evidence which is consistent, probable and identified with taxpayer's books and records, showing that the Department's determination is incorrect. A. R. Barnes v. Department of Revenue, 173 Ill. App. 3d 826, 835 (1^{st} Dist. 1988).

In the case at hand, the taxpayer was given an opportunity to conduct a self-audit and produce reliable summary reports. Even after the taxpayer was give ample time to conduct its self-audit, the auditor found errors, a fact which the taxpayer has not disputed (Tr. pp. 52-53); therefore, the auditor was unable to rely wholly on the taxpayer's summary reports as planned. The auditor is not required to blindly accept the figures on the summary reports when it is admitted that these reports contained an unknown amount of errors. Moreover, credible testimony was given by the auditor that the taxpayer's source documents were in abysmal condition; thereby preventing a detail audit due to the inordinate amount of time which would have been spent on such a review. Given these circumstances, the auditor's decision to project the errors found on the summary results is not only reasonable but is necessary to protect the integrity of the audit.

The question of whether an audit determination meets a minimum standard of reasonableness should not be posed until a taxpayer has introduced credible evidence that the tax adjustment proposed failed to meet these standards. The Department is not required to prove the reasonableness of its audit determinations before the statutory presumption of correctness attaches. Vitale v. Department of Revenue, 118 Ill. App. 3d 210 (3d Dist. 1983). It is the taxpayer's burden to prove that the auditor's error projections and its method of calculating the 1991 sales is clearly incorrect. Here, the taxpayer has only put forth the argument that the auditor's error projections *may* be wrong, however, a hypothetical does not rebut the *prima facie* correctness of the Department's determinations. Taxpayer has not reviewed the royalty reports in detail and produced a final and accurate figure which reflects the actual amount of error in the entire audit period, a number which would directly contradict the auditor's error projections and show the unreasonableness of the auditor's methods. Nor has the taxpayer proven that the auditor's method of calculating the 1991 sales is clearly unreasonable, it has only argued that its' own estimate is better. Case law in Illinois, however, clearly indicates that merely denying the accuracy of the Department's assessments, offering alternative procedures or arguing its audit methodology is flawed does not overcome the Department's *prima facie* case. A. R. Barnes & Co., *supra*; Mel-Park Drugs v. Dept. of Revenue, 218 Ill. App. 3d 203 (1st Dist. 1991).

The remaining issue is whether the Department's assessment of late filing and late payment penalties should stand. 35 **ILCS** 735/3-3. The statute provides that the penalties assessed shall not apply if the taxpayer's failure to file and pay is due to reasonable cause. The Department's regulations state that reasonable cause is to be determined on a case by case basis taking into account all of the facts and circumstances. 86 Admin. Code ch. I, Sec. 700.400(b). Section 700.400 indicates that it must be determined to what extent the taxpayer made a good faith effort to determine the correct tax liability and subsection (c) provides that a taxpayer is considered to have made a good faith effort if he uses ordinary business care and prudence. Factors which are considered in determining whether the taxpayer exercised ordinary business care and prudence are the clarity of the law and its interpretation, and the taxpayer's education, experience and knowledge. *Id.*

The record reflects that the controller, Mr. JIM DOE, prepared the sales tax returns for the years 1991 through 1994. Tr. p. 78. JIM DOE testified that he mailed these returns to the Department on or about the dates listed on the returns, however, no documentary evidence was introduced which proves that the tax returns were timely filed. Tr. p. 79. Taxpayer attempts to establish reasonable cause by offering JIM DOE’s testimony that all four tax returns were mailed in the ordinary course of business. The record reflects, however, that the taxpayer filed annual sales tax returns for the period of 1991 through 1994. It seems highly improbable that four returns, each mailed a year apart, were lost in the mail despite the taxpayer exercising due care. Given these unlikely circumstances, the lack of documentary proof, and the taxpayer’s failure to prove it previously had a stellar filing record, I find that the taxpayer has failed to establish reasonable cause and, accordingly, is not entitled to an abatement of the late filing penalties.

Secondly, the taxpayer provided the testimony of its president to prove that it exercised ordinary business care and is entitled to an abatement of penalties for the failure to pay the tax due. Taxpayer claims he had conversations with various coin dealers in 1987 and 1989 and with James DON DOE, the President of the XYZ Association. Furthermore, he contends that he sought legal advice from counsel, Howard Turner, the corporate secretary and part owner of ABC.

Taxpayer did not exercise ordinary business care by asking unidentified coin dealers whether its medallions were taxable. To exercise ordinary business care one must reasonably rely on the advice of its' tax practitioner. Although the taxpayer maintained that DON DOE told him the medallions were tax-exempt, DON DOE, who drafted the original bill which was the basis for this statute, provided credible testimony that he never advised the taxpayer that the medallions were tax-exempt, since he was, in fact, never convinced that this was the legislature's intent. Tr. pp. 110-113 Lastly, taxpayer's efforts to establish that it reasonably relied on counsel's advice, fails because it was never conclusively established that counsel in this matter, who is also a corporate officer, did offer such legal advice, nor did counsel choose to testify as to his research or efforts to determine the taxability of the medallions.

In fact, the record seems to indicate that the taxpayer did not research the applicable law, since surely the FY Informational Bulletin which directly addressed the taxability of medallions, and which became effective in April of 1985 would have surfaced. Considering that there was published authority in support of the Department's position, it is unreasonable for the taxpayer to blindly rely on fellow colleagues' advice, rather, a reasonably prudent businessman would have requested a private letter ruling as to the medallion's taxability.

Wherefore, for the reasons stated above, it is my recommendation that the Notice of Tax Liability be finalized as revised by the re-audit calculations admitted into evidence as Department Ex. No. 6.

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Christine O'Donoghue
Administrative Law Judge